

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of	)	
	)	
Truth-in-Billing	)	
	)	Notice of Proposed Rule Making
and	)	CC Docket No. 98-170
	)	
Billing Format	)	

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**REPLY COMMENTS OF PILGRIM TELEPHONE, INC.**

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Dated: December 16, 1998

No. of Copies rec'd 0+4  
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## **EXECUTIVE SUMMARY**

Pilgrim Telephone, Inc. ("Pilgrim") supports the Commission's efforts to reduce the confusion surrounding charges on consumers' telephone bills. The Commission has jurisdiction over billing and collection services under Title II and under Title I of the Communications Act of 1934, as amended, 47 U.S.C. § 151, *et. seq.* (the "Act"). The Telephone Disclosure and Dispute Resolution Act, ("TDDRA") does not prohibit the Commission's regulation of billing and collection services.

Pilgrim supports each of the requirements proposed by the Commission, but cautions that the Commission has directed its attention to the wrong stage of the billing process. The Commission must consider regulating the manner in which third-party carriers submit billing data to the local carriers and the manner in which the third-party carrier billing data is processed by the local carrier. Pilgrim's experience demonstrates that each local carrier handles its billing detail for services provided in a different manner. Some local carriers change the description of services Pilgrim provides. Some change Pilgrim's description of the number dialed. If the Commission wishes to preserve consumer choice and minimize consumer confusion, it must regulate the manner in which the billing

information is submitted to and processed by the local carriers. Pilgrim proposed that a clearinghouse be established for the processing of third-party carrier billing information.

The local carriers' complaints about the burdens imposed by regulation of billing and collection services are heavily discounted by the benefits to be earned by establishing a clearinghouse for the processing of billing information from third-party carriers. The local carriers will receive from the billing clearing house billing information ready for inclusion on the consumer's bill. The information provided will be clear and understandable. The number of billing inquiries arising from unintelligible billing entries, therefore will decrease remarkably. Finally, local carriers may recover any real expenses associated with implementing the new billing format through charges to the third-party carriers for billing and collection services.

Establishing a billing clearinghouse will foster consumer choice and preserve competition while rendering clear and intelligible bills to consumers. Pilgrim urges the Commission to expand the scope of its inquiry and include the billing clearinghouse as a requirement.

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Pilgrim Telephone, Inc. ("Pilgrim"), by counsel, and pursuant to the Commission's Notice of Proposed Rule Making ("NPRM"), in the matter of Truth In Billing and Billing Format, CC Docket No. 98-170, issued September 17, 1998, and the Commission's Order, released November 27, 1998, hereby submits its reply comments concerning regulation of the local telephone bill.

The Comments filed in the captioned proceeding were representative of two general camps: the local telephone service providers which seek to maintain absolute control over the local telephone service bill and others

who wish to see a panoply of services provided to customers billed on the local telephone bill in a clear and understandable manner.

## **I. Introduction**

Pilgrim agrees with the Comenters who suggest that the Commission should find that it has jurisdiction over billing and collection services.

Pilgrim agrees also that the Commission should exercise its jurisdiction to expand consumer choice and to minimize consumer confusion.

## **II. The Commission Should Exercise Jurisdiction Over Billing and Collection Services**

### **A. The Commission may assert jurisdiction under Title II of the Communications Act of 1934**

Pilgrim agrees with the Comments of *America's Carriers Telecommunications Association ("ACTA")*. *ACTA* asserts that the Commission may assert jurisdiction over billing and collection services as incidental or closely related to the transmission of wire communications. Under Title II of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § § 201-224 ("Title II")<sup>1</sup> Pilgrim also agrees with *BellSouth Corporation*, which states unequivocally that "[t]he Commission

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<sup>1</sup> *ACTA Comments* at 3-4. See also, *Comments of Electronic Commerce Association*, at 2-3 and *Comments of Global Telecompetition Consultants, Inc.*, at 10-13.

has Title II authority to regulate common carrier billing to end users.”<sup>2</sup>

Title II grants the Commission authority over "common carriers" engaged in the provision of interstate or foreign communication services.<sup>3</sup>

The Commission has determined that its Title II jurisdiction extends to services which are incidental to the provision of communications services.

Whether the Commission should assert Title II jurisdiction over billing and collection services, therefore, depends on whether billing and collection services are incidental to the provision of communications services.

Pilgrim agrees with the Commenters which assert that billing and collection services are incidental to the provision of communications services.

In 1986, the Commission abandoned its regulation of billing and collection Services.<sup>4</sup> In doing so, the Commission found: 1) that billing and collection is not a common carrier service subject regulation under Title II of the Communications Act, 47 U.S.C. §§ 201-224, but rather, is a

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<sup>2</sup> *Comments of BellSouth Corporation*, at 2-3.

<sup>3</sup> *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Second Report and Order, CC Docket No. 91-115, 8 FCC Rcd 4478, 4480 (1993) ("*BNA Order*"), *aff'd in relevant part*, Second Order on Reconsideration, 8 FCC Rcd 8798 (1993), and Third Order on Reconsideration, 11 FCC Rcd 6835 (1996).

<sup>4</sup> *Detariffing Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 FCC 2d 1150 (1986) ("*Detariffing Order*"), *aff'd*, Memorandum Opinion and Order, 1 FCC Rcd 445 (1986) ("*Detariffing Recon Order*").

financial and administrative service; and 2) that sufficient competition for billing and collection service exists to allow market forces to discipline excessive rates or unreasonable practices by exchange carriers in billing and collection and that the ability of inter-exchange carriers ("IXCs") to perform their own billing and collection will put downward pressure on rates for billing and collection service.<sup>5</sup>

Circumstances have changed materially since the adoption of the *Detariffing Order*. The *NPRM* specifically notes the material change in circumstances since the *Detariffing Order*. The *NPRM* notes that competition in all aspects of telecommunications services arose from the 1996 amendments to the Act.<sup>6</sup> The *NPRM* noted that the increased competition has generated many new telephone-related services. The *NPRM* finds that these new telephone-related services are billed on the LEC bill even when provided by third-party carriers. The appearance of the charges for new telephone-related services has caused increased consumer concern about charges for new telephone-related services which are not adequately identified or for which the billing entries contain

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<sup>5</sup> 102 FCC 2d 1168-1169.

<sup>6</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).



relevant information, but in an inaccessible format.

In *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*,<sup>7</sup> the Commission determined that access to information for validation of joint use calling cards was appropriately regulated under the Commission's Title II authority. Specifically, the Commission found that LEC's validation and screening services are "incidental" to the LEC's provision of local exchange access service and therefore are communication by wire, within the meaning of Section 3(a) of the Act, not severable from the underlying local exchange transmission service.<sup>8</sup> The Commission found that "access to validation and screening services is necessary as a practical matter to enable interexchange carriers to provide many interstate services."<sup>9</sup> The validation and screening databases are a byproduct of their local exchange service.<sup>10</sup> The Commission assumed jurisdiction under Title II, and required the LECs to provide validation and screening data, in an original,

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<sup>7</sup> CC Docket No. 91-115, Report and Order and Request for Supplemental Comments, 7 FCC Rcd 3528 (1992) ("Validation Order"), *aff'd in relevant part*, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 1632 (1997).

<sup>8</sup> *Validation Order*, 7 FCC Rcd at 3531,

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

accurate and up-to-date form.<sup>11</sup> Billing and collection services are no different.

In the *BNA Order*, the Commission found that obtaining and disclosing billing name and address ("BNA") data is incidental to the LEC's provision of access service. LECs obtain BNA in the course of doing business as local exchange service providers. When a LEC permits customers to use local exchange service accounts to pay for another carrier's telephone-related services, the LEC's provision of validation and BNA to the other carrier enables a payment system which is incidental to the LEC's provision of the underlying exchange service.

Billing and collection services are no less a payment system. The payment system is enabled by the consumer's choice of service and request that the service be billed to its local telephone bill. To the extent that a LEC allows access to its bill for any third-party carrier provided telephone-related service, the LEC must be required to allow billing access to all third-party carriers providing telephone-related services requested by the LEC's customers. The payment system is possible because of the LEC's existing relationship with the local exchange customers. The database and

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<sup>11</sup> *Id.*

the local bill are byproducts of the existing relationship. Just like validation and BNA, billing and collection is a Title II service.

The change in circumstances noted by the passage of the 1996 Act and cited as the basis of the *NPRM* mandate a change in the regulation of billing and collection services. The Commission should revisit the decision made in the *Detariffing Order*, and in light of the changed circumstances, assume Title II jurisdiction over billing and collection services.

B. The Commission may regulate billing and collection  
under its Title I Jurisdiction

Pilgrim supports the Comments of those parties which assert that if the Commission finds it does not have jurisdiction under Title II, it may assert ancillary jurisdiction under Title I.<sup>12</sup> Title I confers on the Commission more general jurisdiction over "interstate and foreign communication by wire or radio."<sup>13</sup> The Commission is empowered to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."<sup>14</sup> In the *Detariffing Order*, the Commission determined

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<sup>12</sup> See, e.g., *Comments of NevadaCom, Inc.*, at 8-9; \*\*

<sup>13</sup> Section 2(a) of the Act, 47 U.S.C. § 152(a).

<sup>14</sup> Section 4(i) of the Act, 47 U.S.C. § 154(i).

that its powers under Section 4(i) of the Act, "would be sufficient to enable [it] to regulate exchange carrier provision of billing and collection to interexchange carriers."<sup>15</sup> The Commission noted that the exercise of "ancillary jurisdiction" under Title I, requires a record finding that the proposed regulation would be directed at protecting or promoting a statutory purpose. In the *Detariffing Order*, the Commission concluded that

because there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period.

102 FCC Rcd at 1170. The facts found in the *Detariffing Order*, that there is competition in the provision of billing and collection services, have changed substantially. The predictions and assumptions made about the competitive market have failed to materialize.<sup>16</sup> The facts which formed

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<sup>15</sup> 102 FCC 2d at 1169.

<sup>16</sup> For example, the Commission expected that AT&T would develop a commercially viable billing and collection service for itself and perhaps third parties. *Detariffing Order*, 102 FCC 2d at 1157; 1170, n. 50. Some twelve years later, AT&T continues to rely on local carriers for billing and collection of charges for its services. See CC Docket No. 91-115, Report and Order and Request for Supplemental Comments, 7 FCC Rcd 3528 (1992) ("Validation Order"), *aff'd in relevant part*, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 1632 (1997).

the basis of the *Detariffing Order* are so substantially different than the existing facts, these twelve years later, as to provide a statutory purpose for the assertion of ancillary jurisdiction under Title I. In order to create order out of the chaos noted in the *NPRM*, the Commission should assert jurisdiction over billing and collection services.

C. The Commission may assert jurisdiction over Billing and Collection Services consistent with the Telephone Disclosure and Dispute Resolution Act

Bell Atlantic asserts that the Commission has no jurisdiction over billing for telephone billed services, as the Telephone Disclosure and Dispute Resolution Act<sup>17</sup> gives the Federal Trade Commission ("FTC") jurisdiction over billing issues.<sup>18</sup> Bell Atlantic's position fails to recognize the explicit limitation on the FTC's jurisdiction. Specifically, Section 5 of the Federal Trade Commission Act,<sup>19</sup> excludes common carriers from the FTC's jurisdiction. While the TDDRA created a specific exception to the limitation on the FTC's jurisdiction, that exception related strictly to the regulation of advertising and price disclosure requirements for pay-per-call

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<sup>17</sup> 15 U.S.C. 5711, *et. seq.* ("TDDRA").

<sup>18</sup> *Comments of Bell Atlantic*, at 2-3.

<sup>19</sup> 15 U.S.C. § 45.

services. TDDRA does not preclude regulation of billing and collection services by the Commission. The Commission may assert its authority and adopt rules concerning billing and collection services.

### **III. Rules Adopted Should Preserve Consumer Choice and Avoid Consumer Confusion**

The Commission proposes to adopt rules concerning the appearance of consumers' local telephone bills. Pilgrim applauds the Commission's proposal, but notes that the NPRM may propose treatment of a symptom without addressing the true illness. Without uniform treatment of third-party carrier billing records, the local carrier may be left to treat the information in any way they wish -- even revising service descriptions or changing dialed numbers. In light of the increased competition and the growing number of local carriers, Pilgrim recommends that the Commission seize this opportunity to establish a clearinghouse for processing charges from third-party services, such as casual calling services. A billing clearinghouse will ensure that consumer choice is preserved, as contemplated in Section 228 of the Act, 47 U.S.C. § 228, while providing uniform information to all local carriers for clear, consistent presentation on consumer bills.

A. Preserving Choice

In adopting the Telephone Disclosure and Dispute Resolution Act ("TDDRA"), Congress specifically found the many third-party carriers provided valuable information, increased consumer choices and stimulated innovative and responsive services that benefit the public.<sup>20</sup> In proposing revisions to its rules adopted under TDDRA, the Federal Trade Commission ("FTC") noted its responsibility to "encourage the growth of the legitimate pay-per-call industry."<sup>21</sup>

This Commission has been charged with promoting the development of competition in all aspects of telecommunications services.<sup>22</sup> Preservation of consumer choice of services and service providers is key to promoting competition. Consumer choice is thwarted when access to the local carriers' bills is cut off arbitrarily. Processing of third-party carrier billing information, particularly for casually called services, through an independent clearing house will preserve consumer choice and encourage competition. Allowing the local carriers to handle third-party carrier casual

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<sup>20</sup> 15 U.S.C. § 5701(B)(2).

<sup>21</sup> Notice of Proposed Rule Making, 16 C.F.R. Part 308, Billing Code 6750-01-P

<sup>22</sup> NPRM at 1, fn. 1, citing the 1996 Act.

call billing leaves a competitor to police the billing and collection for a competitive service. The Commission found the notion of competitor control over essential elements offensive in establishing the 800 SMS database<sup>23</sup> and it should find it offensive now. A billing clearing house would foster competition and encourage consumer choice, thereby accomplishing the lofty goals of the 1996 Act.

B. Standard input formats will result in clearer bills.

Billing and collection services produce a bill which aggregates all charges to the customer's account, designated by its telephone number. Currently, each local carrier is free to specify the format in which call detail is submitted for processing and eventual presentation on the consumer's bill. Currently, the clarity of the information provided on the consumer's bill is left to the local carrier's discretion, regardless of the information provided by the service provider. Unless the Commission assumes jurisdiction and regulates the provision of billing and collection services, confusion about third-party carrier services provided will continue.

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<sup>23</sup> See, *Provision of Access for 800 Service*, 4 FCC Rcd 2824 (1989); *Memorandum Opinion & Order on Reconsideration*, 6 FCC Rcd 5421 (1991); and *Second Report and Order*, 8 FCC Rcd 907 (1993).



Pilgrim supports all of the Commenters which advocate uniform bill presentation. Pilgrim believes, however, that the Commission is looking at only one-half of the problem – and perhaps is proposing a solution which will only facially correct the billing confusion. Pilgrim proposed in its initial comments that the Commission specify the manner in which billing information is supplied by service providers to the billing entities and then the manner in which the billing entities present the billing information received from third party service providers. Pilgrim even recommended that a billing clearinghouse be established to independently process billing information from third-party carriers to be provided for clear presentation on local carrier bills.

C. Burden on Carriers

Many carriers argue that the rules proposed in the NPRM will impose an unreasonable burden on the local carriers. Pilgrim submits that a local clearinghouse will simplify the billing process for all billing carriers and, in the end, reduce the cost burden of producing the customer's bills and accomplish the goals the Commission established in the NPRM. In any event, the Commission traditionally places the burden on the carriers when there is a need for market reorganization. When the Commission

established the SMS 800 clearinghouse, which was required for full competition among inter-exchange carriers, the carriers involved paid the cost and then recovered the cost from the parties who accessed the database.<sup>24</sup>

In the Comments, however, the local carriers overestimate the burden of providing clearer bills to their customers. If billing for third party services is first processed by a clearinghouse, local carriers will receive billing information ready for inclusion on customer's bills without further processing. Additionally, local carriers may assess charges for the billing and collection services provided to third-party carriers.<sup>25</sup> The charges to third-party carriers may compensate the billing carriers for any investment in software required to make the customers' bills clearer and more understandable. Additionally, billing carriers may expect that with the clearer, more intelligible bills, the number of billing inquiries will decrease. In all, there will be no increased burden on the billing carriers and, in fact, the burden will be decreased.

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<sup>24</sup> Provision of Access for 800 Service, CC Docket No. 86-10, 8 FCC Rcd 907 (1993).

<sup>25</sup> Charges for access to the 800 SMS database are usage sensitive charges for submission of billing records to the clearinghouse may be usage sensitive or may be included in the fees charged for provision of billing and collection services.

The carriers' complaints about the burden of additional regulation should be balanced, not only with the benefit to the public, but the certain benefit to the carriers that will flow from establishment of a clearinghouse for billing third-party carrier services.

An independent clearinghouse would ensure proper processing and clear presentation of charges for third-party carrier services. A clearinghouse would avoid any appearance that a local carrier might present third-party carrier billing information in a purposely confusing manner in order to minimize competition for the services provided.

Any burden the local carriers must bear is balanced by the decreased cost of processing billing information and a reduction in consumer billing inquiries. Any increased burden may be passed onto the third-party carriers in charges for billing and collection services. Clearly, the public interest benefits to be realized by the establishment of a clearinghouse to process third-party carrier billing.

#### **IV. The Commission must at least increase the information available in LIDB**

If the Commission fails to establish a clearinghouse for processing of billing information for third-party carriers, the Commission should order the inclusion of end-user customer information essential to the provision of

casual access to consumers in the line information database (“LIDB”). Specifically, third party providers of casual access must be able to access customer name information and information concerning any line blocks an end-user customer may have ordered from the billing carrier. If a third party provider of casual access is able to access such information, it may make reasoned judgment regarding whether a caller from a line actually is the subscriber or otherwise authorized to make telephone-billed purchases from the telephone line to be billed.

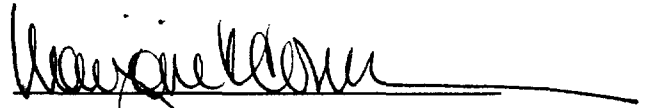
Pilgrim suggests that if a third-party casual calling service provider has access to such information and fails to check it before completing a call, then the call is presumptively unauthorized and should not be charged to the end user customer. If, on the other hand, the third-party casual calling service provider checks the database and is reasonably certain that the caller is the subscriber or is otherwise authorized to make telephoned-billed purchases from the subscriber's telephone, the call is presumptively authorized. Proper use of the database would create a safe harbor for completion and charging of telephone-billed purchases. Pilgrim submits that all of the necessary information may be included in the lookup with only small adjustments and minor software development. On balance, the

protection to the customer afforded by inclusion of billing name and any toll blocks in the information made available through LIDB warrant a requirement that information included in LIDB be expanded.

## **V. Conclusion**

Pilgrim supports the Commission's efforts to preserve consumer choice and lessen consumer confusion. The Commission, however, must expand its examination of the billing process to encompass the input and processing of third-party carrier billing records to ensure faithful reproduction of the charges on consumer telephone bills.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Walter Stenmel, Jr.", written over a horizontal line.

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Dated: December 16, 1998

Doc. #72444